

IN RE: Timothy Bond, True Vine Publishing)
Personal Property Account No. 128238) Davidson County
Tax Year 2005 & 2006)

Statement of the Case

Original Assessment	Revised Assessment	Back Assessment
\$ -0-	\$145,325	\$145,325
\$145,325	\$181,656	\$ 36,331

This matter was reviewed by the undersigned administrative law judge pursuant to Tennessee Code Annotated (T.C.A.) §§ 67-5-1412, 67-5-1501 and 67-5-1505. A jurisdictional hearing was conducted on November 14, 2006, at the Division of Property Assessments' Office. Present at the hearing were Timothy Bond, the taxpayer who represented himself and Mr. Alan Morgan, Division of Personal Property Assessments for the Metro. Property Assessor.

The initial issue is whether or not the State Board of Equalization has the jurisdiction to hear the taxpayer's appeal. The law in Tennessee generally requires a taxpayer to appeal an assessment to the County Board of Equalization prior to appealing the State Board of Equalization. T.C.A. §§ 67-5-1401 & 67-5-1412 (b). A direct appeal to the State Board of Equalization is only permitted if the assessor does not timely notify the taxpayer of a change of assessment prior to the meeting of the County Board. T.C.A. §§ 67-5-508(b)(2); 67-5-1412 (e). Nevertheless, the legislature has also provided that:

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demonstrating such reasonable cause, the [state] board shall accept such appeal from the taxpayer up to March 1st of the year subsequent to the year in which the assessment is made (*emphasis added*).

In analyzing and reviewing T.C.A. § 67-5-1412 (e), the Assessment Appeals Commission, in interpreting this section, has held that:

The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge of them. It was not the intent of 'reasonable cause' provisions to waive these requirements except where the failure to meet them is **due to illness or other circumstances beyond the taxpayer's control.** (*emphasis added*), *Associated Pipeline Contractors Inc.*, (Williamson County Tax Year 1992, Assessment Appeals Commission, Aug. 11, 1994). See also *John Orovets*, (Cheatham County, Tax Year 1991, Assessment Appeals Commission, Dec. 3, 1993).

Thus for the State Board of Equalization to have jurisdiction in this appeal, the taxpayer must show that circumstances beyond his control prevented him from appealing to the Davidson County Board of Equalization and then filing with the State Board of Equalization within the time frames allowed. It is the taxpayer's burden to prove that they are entitled to the requested relief.

The deadline for filing to the State Board of Equalization for tax year 2005 would have been September 30, 2005 unless "reasonable cause" exists to excuse the timely filing. The form was filed on August 10, 2006, clearly well outside the time frame. The explanation the taxpayer has given is that he is the sole proprietor of a business that he runs out of his home, he first started the business in 2004. Mr. Bond was not aware that he had an obligation to fill out a Schedule "B" pursuant to T.C.A. §67-5-903. So when he first received the Notice regarding a FORCED assessment he did not read it, but instead, turned in over to his "financial consultants" from his church.¹ Mr. Bond stated that he relied on them to do what was necessary to process the appropriate forms.

Mr. Bond does not contest that he received the Notice or that the Notice specifically states that:

If you have questions regarding the charges set forth above, (including classification, assess value, and/or adjustments made, if any) please contact the Assessor's Office at (615) 862-6073 without delay. In addition, if you disagree with the charges set forth above, . . . you may appeal to the Metropolitan Board of Equalization.

The Notice goes on to give the taxpayer the dates by which request must be made. Mr. Bond failed to contest the values at any time, and as noted, the assessments became final.

¹ It is unclear whether the 'consultants' are tax consultants, tax prepares or just friends with 'good' intentions.

Mr. Bond has not been able to explain why he failed to comply with the appropriate statutes regarding the filing deadlines other than to state that "I have no understanding of tax issues. . ."

After reviewing all the documentation and the taxpayers' explanation, there is, regrettably, not sufficient reasonable cause to maintain that incidents beyond Mr. Bond's control prevented him from filing with the County Board in the 2005 and 2006.

A review of the case law has failed to find any Tennessee cases² that have held that the reliance by a taxpayer on the advice of a "tax professional" is considered "reasonable cause" in determining that a reasonable cause exists for the taxpayers failure to comply with T.C.A. §67-5-1412 (e), thus allowing the State Board jurisdiction.

ORDER

The Administrative Judge believes that "reasonable cause" does not exist and the taxpayer has not sustained his burden and therefore the State Board of Equalization does not have jurisdiction to hear this Appeal.

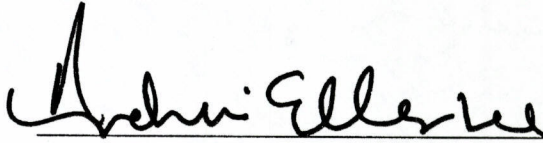
Pursuant to the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-301—325, T.C.A. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. T.C.A. § 67-5-1501(c) provides that an appeal "must be filed within thirty (30) days from the date the initial decision is sent." Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal "identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"; or
2. A party may petition for reconsideration of this decision and order pursuant to T.C.A. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to T.C.A. § 4-5-316 within seven (7) days of the entry of the order.

² *In re McAtee*, 115 B.R. 180 (N.D. Iowa 1990) the Courts considered that the reliance is misplaced. The ultimate responsibility lies with the tax payer. *Smokey Mountain Secrets, Inc. v. United States of America*, (an I.R.S. case) 910 F.Supp. 1316, 1995

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

Entered on this the 12th of January, 2007.

A handwritten signature in black ink, appearing to read "Andrei Ellen Lee", written over a horizontal line.

ANDREI ELLEN LEE
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Timothy Bond, True Vine Publishing
Jo Ann North, Assessor of Property